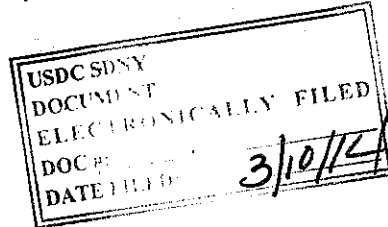




77 Water Street, New York, NY 10005 P 212.584.0700 F 212.584.0799 www.seegerweiss.com

March 7, 2014



By Email & Facsimile

Honorable Cathy Seibel
United States District Judge
Southern District of New York
Hon. Charles L. Brieant Jr. Federal
Building and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: *In re Mirena IUD Products Liability Litigation*, No. 13-MD-2434 (CS) (LMS)

Dear Judge Seibel:

The Plaintiffs' leadership, following consultation with counsel for the plaintiff in *Amanda Truitt v. Bayer HealthCare Pharmaceuticals Inc.*, No. 7:13-CV-07811 (CS) ("*Truitt*"), respectfully submits this response to Defendants' letter dated March 3, 2014, in which Defendants proposed a substitute action and briefing schedule with respect to the statute of limitations issue that they wish for the Court to address in the event that *Dorena Borders v. Bayer HealthCare Pharmaceuticals Inc.*, No. 7:13-CV-06818 (CS) ("*Borders*"), were voluntarily discontinued.

As the Court is aware, the *Borders* action was voluntarily dismissed yesterday pursuant to Rule 41(a) (Doc. No. 733). In place of *Borders*, Defendants have proposed to file a Rule 12(b)(6) statute of limitations motion in *Truitt*. With one notable exception, Plaintiffs do not object to Defendants' proposed timetable for amendment of the complaint and briefing of the forthcoming motion in *Truitt*.

Plaintiffs do not object to the proposed March 24, 2014 deadline for Plaintiff Truitt to amend her complaint (which Plaintiff intends to accomplish), the April 7, 2014 deadline for Defendants to file their motion and opening memorandum of law, or the period of time for Defendants to file their reply memorandum (14 days after the filing of the opposition to Defendants' motion). Plaintiffs, however, do object to the proposed April 24, 2014 deadline for the filing of a response to the motion.

Defendants' proposed deadline for the filing of opposition to the motion overlooks certain realities and practicalities. They propose to afford Plaintiffs only 17 days to respond to

New York

Newark

Philadelphia

Honorable Cathy Seibel
March 7, 2014
Page | 2

the motion – which will be Plaintiffs' only opportunity to be heard in writing on the motion – while affording themselves a comparatively generous 14 days to file their reply on a case of their choosing.

Importantly, Defendants either overlook (or at least minimize) the fact that a brand new plaintiff and her counsel are being brought into this proposed motion practice that Defendants seek for the purpose of providing guidance to an entire MDL. Prior to Bayer's submission of its February 28th letter, Plaintiff Truitt and her attorney had not been previously involved in this matter. The preparation of a response to Defendants' motion will necessarily involve coordination between Plaintiff Truitt's counsel and the MDL leadership. Sufficient time for that is not built into Defendants' scheduling proposal on a brand new case that they have offered up on this issue.

For this reason, Plaintiffs respectfully request that the deadline for the filing of a response to Defendants' forthcoming motion be April 30, 2014 rather than April 24, 2014, and that Defendants' reply accordingly be due 14 days thereafter (or May 14, 2014 rather than May 8, 2014). The modest 6 additional days (or a total of 23 days) for the filing of a response to the motion is still less time than what the Court had provided in its initial briefing schedule in *Borders* (31 days) and should not cause the forthcoming *Truitt* motion to trail significantly behind the revised schedule that had been adopted with respect to the now-dismissed *Borders* action, which was the concern that the Court expressed at the February 26, 2014 status conference.¹

We thank the Court for its consideration of this submission.

Respectfully,

/s/ Diogenes P. Kekatos
Diogenes P. Kekatos
Plaintiffs' Liaison Counsel

ANAPOL SCHWARTZ
/s/ James R. Ronca
James R. Ronca
Plaintiffs' Co-Lead Counsel

PARKER WAICHMAN LLP
/s/ Matthew J. McCauley
Matthew J. McCauley
Plaintiffs' Co-Lead Counsel

MOTLEY RICE LLC
/s/ Fred Thompson III
Fred Thompson III
Plaintiffs' Co-Lead Counsel

¹ We note that although the Court had previously shortened Plaintiff *Borders*' time to respond to Defendants' motion, that was only after Ms. *Borders*' counsel had requested an extension of time to amend the complaint. Here, no additional time is being requested for that purpose.

Honorable Cathy Seibel

March 7, 2014

Page | 3

cc: **By email**

Shayna S. Cook, Esq.

James Shepherd, Esq.

William P. Harrington, Esq.

Shezad Malik, Esq.

SEEGER WEISS LLP
Attorneys At Law
77 Water Street, 26th Fl.
New York, New York 10005

Telephone (212) 584-0700
Tele - fax (212) 584-0799

FAX COVER SHEET

Date: March 7, 2014

Pages: 4 (including cover sheet)

To: Honorable Cathy Seibel
United States District Judge

Fax: (914) 390-4278

From: Diogenes P. Kekatos
Plaintiffs' Liaison Counsel

Email: DKekatos@seegerweiss.com

Re: *In re Mirena IUD Products Liability Litigation*, No. 13-MD-2434 (CS) (LMS)

Your Honor, please see the attached letter from Plaintiffs' Liaison Counsel for the Mirena litigation.

CONFIDENTIALITY NOTE

This telecopier cover letter and the documents accompanying the same contain information from the law firm of Seeger Weiss LLP and are intended solely for the use of the person or persons whose name or names appears above. This information may be confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

If you do not receive all pages, please call (212) 584-0700 for assistance.